

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

OSSIE LEE SLAUGHTER,

Plaintiff,

v.

PATRICK R. GLEBE, et al.,

Defendants.

CASE NO. C15-5484BHS-JRC

ORDER DENYING OBJECTIONS  
AND ADOPTING REPORTS AND  
RECOMMENDATIONS

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 124), and Plaintiff Ossie Lee Slaughter’s (“Slaughter”) objections to the R&R (Dkt. 125). Also before the Court is Judge Creatura’s R&R (Dkt. 133) on Slaughter’s motion for a preliminary injunction (Dkt. 128).

On August 7, 2015, Slaughter filed a prisoner civil rights complaint, alleging claims under the First, Fifth, Eighth, and Fourteenth Amendments. Dkt. 12 at 5–9. Although Slaughter did not file a motion for a preliminary injunction, Slaughter requested a preliminary injunction in his complaint to prevent him from being transferred to another prison. *Id.* at 8.

1 On October 8, 2015, Defendants moved to dismiss Slaughter's complaint for  
2 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Dkt. 44. On  
3 December 9, 2015, Judge Creatura recommended denying Defendants' motion as to  
4 Slaughter's First Amendment claim. Dkt. 61 at 14–17. Judge Creatura also recommended  
5 granting Defendants' motion with regard to Slaughter's remaining claims, but with leave  
6 to amend his Eighth Amendment claim and the personal participation of certain  
7 individual defendants. *Id.* at 7–14. Finally, Judge Creatura recommended denying  
8 Slaughter's request for preliminary injunctive relief as moot. *Id.* at 19–20.

9 On January 4, 2016, Slaughter filed objections to the R&R. Dkt. 66. On January  
10 21, 2016, Defendants responded. Dkt. 69. On February 23, 2016, the Court adopted Judge  
11 Creatura's recommendations, dismissing numerous claims and granting Slaughter leave  
12 to amend his complaint as to his Eighth Amendment claim by March 18, 2016. Dkt. 73.

13 On November 7, 2016, Slaughter filed his amended complaint. Dkt. 109. Despite  
14 numerous extensions, Slaughter filed the amended complaint months after his latest  
15 extended deadline of August 19, 2016. *See* Dkts. 91, 84, 103. On November 18, 2016,  
16 Defendants moved to dismiss Slaughter's complaint under Fed. R. Civ. P. 41(b) for  
17 failure to timely file his amended complaint. Dkt. 110. In the alternative, Defendants  
18 requested an extension to answer the amended complaint. *Id.* On December 13, Slaughter  
19 responded to the motion to dismiss. Dkt. 117. On December 15, 2016, Defendants  
20 replied. Dkt. 119.

21 On January 11, 2017, Judge Creatura issued the R&R denying Defendants' motion  
22 to dismiss under Rule 41(b). Dkt. 124. Judge Creatura also recommended granting

1 Defendants' request for an extension to answer Slaughter's amended complaint. *Id.* On  
2 August 22, 2016, Slaughter objected to the R&R. Dkt. 125. On February 1, 2017,  
3 Defendants responded to Slaughter's objections. Dkt. 132.

4 When considering a nondispositive order from a magistrate judge, the district  
5 judge must consider timely objections and modify or set aside any part of the order that is  
6 clearly erroneous or is contrary to law. Fed. R. Civ. P. 72(a).

7 Slaughter objects to the R&R on three grounds. First, he objects to Judge  
8 Creatura's analysis on whether Defendants suffered prejudice from his unreasonable  
9 failure to timely amend his complaint. *See* Dkt. 125 at 3–4. Second, he objects to the  
10 extension to file an answer. *See* Dkt. 125 at 3–4. Third, he objects to Judge Creatura's  
11 recommendation to strike the claims that the Court has already dismissed on Defendant's  
12 previous Rule 12 motion. *See* Dkt. 73. The Court rejects Slaughter's objections because  
13 he has failed to show that the R&R is clearly erroneous or contrary to law.

14 First, Judge Creatura generously ruled in Slaughter's favor when he refused to  
15 dismiss the amended complaint, despite the fact that it was filed months after the twice  
16 extended deadline. Because the issue of dismissal was decided in favor of Slaughter, his  
17 objection to the R&R's analysis on the third *Moran* factor for involuntary dismissal  
18 serves no purpose, *see* Dkt. 125 at 2–5, and the Court need not address it.

19 Second, the Court rejects Slaughter's objection to Judge Creatura's order granting  
20 an extension to answer. *See* Dkt. 125 at 3–4. Because Defendants' motion to dismiss was  
21 not made under Rule 12, it did not automatically toll their time to answer the amended  
22 complaint. *See* Fed. R. Civ. P. 12(a)(1), (a)(4). Therefore, the extension was merited to

1 afford Defendants an opportunity to receive a ruling on their dispositive motion prior to  
2 incurring potentially unnecessary litigation costs. Moreover, there is no indication that  
3 Slaughter will suffer any form of prejudice from the extension. The lack of prejudice is  
4 strongly evidenced by the numerous extensions Slaughter requested and received before  
5 filing his amended complaint, as well as his failure to amend until months after the  
6 extended deadlines had passed.

7 Third, the Court rejects Slaughter's objection to the recommendation that the  
8 claims previously dismissed by the Court be stricken from the amended complaint. *See*  
9 Dkt. 125 at 5–7. Slaughter was not granted leave to amend his Fifth and Fourteenth  
10 Amendment claims or his claims against defendants Flemming, Presswood, and Casey,  
11 *see* Dkt. 61 at 10–13. Therefore it was inappropriate to include them in his amended  
12 complaint. Regardless, the amended complaint does not cure the deficiencies in those  
13 claims. *See* Dkts. 12, 61, 109. They are appropriately stricken. Remaining before the  
14 Court are Slaughter's First and Eighth Amendment claims. Whether the amended  
15 complaint has cured the pleading deficiencies that warranted the previous dismissal of  
16 Slaughter's Eighth Amendment claim remains to be seen, as the issue was not raised in  
17 the dispositive motion addressed by the R&R.

18 Additionally, the Court adopts Judge Creatura's R&R regarding Slaughter's  
19 motion for a preliminary injunction. *See* Dkts. 128, 133. While Slaughter's lawsuit brings  
20 claims against employees at Stafford Creek Corrections Center ("SCCC"), *see* Dkt. 103,  
21 his motion for preliminary injunction seeks relief from nonparty employees at Coyote  
22 Ridge Corrections Center ("CRCC"). Dkt. 128. While Plaintiff claims that the conduct of

1 the nonparties at CRCC is somehow related to the conduct of Defendants at SCCC, he  
2 has failed to set forth any facts supporting such an allegation. *See* Dkt. 128. Therefore,  
3 the Court agrees with the R&R that the requested prospective relief must be denied. *See*  
4 *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945) (denying the  
5 requested prospective relief when “[i]t is not an injunction in the cause, and it deals with  
6 a matter lying wholly outside the issues in the suit.”).

7 Therefore, the Court having considered the R&Rs, Slaughter’s objections, and the  
8 remaining record, it is hereby **ORDERED** that:

- 9 1. The R&R denying dismissal, granting an extension, and striking Slaughter’s  
10 previously dismissed claims (Dkt. 124) is **ADOPTED**;
- 11 2. The R&R denying Slaughter’s motion for a preliminary injunction (Dkt. 133)  
12 is **ADOPTED**;
- 13 3. Defendants shall answer the amended complaint no later than March 24,  
14 2017.

15 Dated this 21<sup>st</sup> day of February, 2017.

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19 BENJAMIN H. SETTLE  
20 United States District Judge  
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